Supreme Court, U.S.
FILED
JUL 16 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-1978

In The
Supreme Court Of The United States

OCTOBER TERM, 1987

MOHAN L. MEHTA & RADHA R.M. NARUMANCHI,
Petitioners,

v.

THE BOARD OF TRUSTEES OF THE CONNECTICUT STATE UNIVERSITIES, MICHAEL ADANTI, ALAN H. LEADER, DAVID C. NEWTON, KERRY GRANT, BARBARA BARD, MICHAEL R. BECKER, FRANK E. MUSKA, JERRY BANNISTER, MICHAEL PERNAL, DORIS GRISCOM, INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITIES,
Respondents.

RESPONDENTS' REPLY BRIEF TO PETITIONERS' SUPPLEMENTAL BRIEF WITH ATTACHED APPENDIX

JOSEPH I. LIEBERMAN
Attorney General
ROBERT W. GARVEY
Assistant Attorney General
JANE S. SCHOLL
Assistant Attorney General
THOMAS P. CLIFFORD, III
Assistant Attorney General
MacKenzie Hall
110 Sherman Street
Hartford, CT 06105
Tel: (203) 566-3696
Counsel of Record for Respondents

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ADDITIONAL REASON WHY THE PETITION SHOULD BE DENIED

1. The Second Circuit Denied Petitioner's Request For A Rehearing *En Banc* Following Its Decision In *Narumanchi.*

Petitioner in his supplemental brief seeks to have this Court decide whether the Second Circuit Court of Appeals erred in affirming the district court's decision in *Mehta v. Board of Trustees,* DK. No. 87-7504 (December 9, 1987). (Appendix A to Petition pp. 003–005). As grounds in support of his petition he claims that the Second Circuit's decision in *Mehta* is at variance with its decision in *Narumanchi v. Board of Trustees,* DK No. 87-7796 (June 20, 1988). (Appendix L to Supplemental Brief p. 0001A). In *Narumanchi* the Court of Appeals affirmed in part and reversed in part the decision of the district court in ruling on a motion to dismiss and motion for summary judgment. *Id.*

The appeal in *Narumanchi* is to be distinguished from the appeal in *Mehta.* Not only are they two separate and distinct cases but, more important, the two cases raised entirely separate issues on appeal. As noted, *Mehta* raised one issue before the Second Circuit, i.e. the alleged failure of the defendants to submit an evidentiary affidavit with their summary judgment motion. This is to be distinguished from the issue raised in *Narumanchi,* to wit: whether it was error to dismiss a § 1983 claim because plaintiff failed to exhaust his administrative remedies. (Appendix L to Supplemental Brief p. 008A).

Moreover, petitioner fails to inform this Court in his supplemental brief that he, on April 28, 1988, moved for leave to file for a rehearing *en banc* out of time, following the Second Circuit's affirmance of *Mehta.* The Court of Appeals denied this motion on June 21, 1988, one day after its affirmance in part and reversal, in part, of *Narumanchi.* Obviously the Second Circuit was aware of the *Narumanchi* ruling and it did

not merit the granting of a rehearing *en banc* by the Second Circuit in *Mehta*. (Appendix 1).

Accordingly, the petition for writ of certiorari should be denied.

JOSEPH I. LIEBERMAN
Attorney General

ROBERT W. GARVEY
Assistant Attorney General

JANE S. SCHOLL
Assistant Attorney General

THOMAS P. CLIFFORD, III
Assistant Attorney General
MacKenzie Hall
110 Sherman Street
Hartford, CT 06105
Tel: (203) 566-3696

APPENDIX 1

Second Circuit Rule 27(a) governing use of this form is reprinted on reverse of Page 2. Note requirement that supporting affidavits be attached.

United States Court of Appeals
FOR THE SECOND CIRCUIT

MOHAN L. MEHTA & RADHA R.M. NARUMANCHI,

Plaintiffs-appellants

v.

THE BOARD OF TRUSTEES OF THE CONNECTICUT STATE UNIVERSITIES, ET AL.,

Defendants-appellees

Use short title

87-7504

Docket Number

NOTICE OF MOTION

state type of motion

for leave to file suggestion for rehearing in banc out of time

MOTION BY: *(Name, address and tel no of law firm and of attorney in charge of case)*

KRISHNA R. VEMPATY
1123 Broadway Suite 302
New York, N.Y. 10010
(212) 242 3333

OPPOSING COUNSEL: *(Name, address and tel no of law firm and of attorney in charge of case)*

JOSEPH I. LIEBERMAN, ESQ.
110 Sherman Street
Hartford, CT 06105
Attn: Thomas P. Clifford III, Esq.

Has consent of opposing counsel:
- A. been sought? ☐ Yes ☒ No
- B. been obtained? ☐ Yes ☒ No

Has service been effected? ☒ Yes ☐ No

Is oral argument desired? ☒ Yes ☐ No
(Substantive motions only)

Requested return date:
(See Second Circuit Rule 27(b))

Has argument date of appeal been set: Already argued
- A. by scheduling order? ☐ Yes ☐ No
- B. by firm date of argument notice? ☐ Yes ☐ No
- C. If Yes, enter date: _____

EMERGENCY MOTIONS, MOTIONS FOR STAYS & INJUNCTIONS PENDING APPEAL

Has request for relief been made below? ☐ Yes ☐ No
(See F.R.A.P. Rule 8)

Would expedited appeal eliminate need for this motion? ☐ Yes ☐ No

If No, explain why not:

Will the parties agree to maintain the status quo until the motion is heard? ☐ Yes ☐ No

Judge or agency whose order is being appealed:

Hon. Peter C. Dorsey of the U.S. District Court, Connecticut.

1A

Brief statement of the relief requested:

Leave to file suggestion for rehearing in banc out of time.

Complete Page 2 of This Form

By: *(Signature of attorney)*

Krishna M. Vempaty

Signed name must be printed beneath

KRISHNA M. VEMPATY

Appearing for: *(Name of party)*

April 28, 1988

Date

Appellant or Petitioner:
☐ Plaintiff ☐ Defendant

Appellee or Respondent:
☐ Plaintiff ☐ Defendant

ORDER

Kindly leave this space blank

IT IS HEREBY ORDERED that the motion be and it hereby is ~~granted~~ denied

UNITED STATES COURT OF APPEALS
FILED
JUN 21 1988
ELAINE B. GOLDSMITH, CLERK
SECOND CIRCUIT

JUN 21 1988

Date

Circuit Judge

2A